

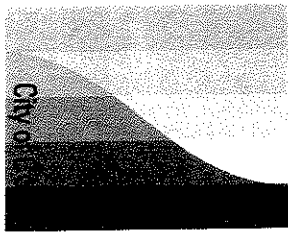
CITY CLERK
(712) 328-4616

AGENDA

**CITY COUNCIL STUDY SESSION
COUNCIL CHAMBERS
MONDAY, February 25, 2008
3:45 P.M.**

- A. Hearing: Walgreens, #5306
2nd tobacco violation within two years
- B. Review of Agenda
- C. ***Executive Session:***
Property Acquisition





OFFICE OF:
LEGAL DEPARTMENT
(712) 328-4620

January 17, 2008

Walgreen Company
P.O. Box 901, MS #1435
Deerfield, IL 60015

RE: Walgreen's #5306
301 W. Bennett Avenue
Council Bluffs, IA 51501

The City of Council Bluffs has scheduled a hearing before the City Council at 3:45 p.m. on the 25th day of February, 2008, in the City Council Chambers, 2nd Floor, City Hall, 209 Pearl Street, Council Bluffs, Iowa. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the **mandatory** civil penalty of a **\$1,500.00 fine or a thirty-day cigarette permit suspension** prescribed by Iowa Code Section 453A.22(2)(b) for the violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to the office of the City Attorney, 209 Pearl Street, Council Bluffs, IA 51503, no later than ten (10) business days prior to the hearing date. Accepting and abiding by the terms of the Acknowledgment/Settlement Agreement will satisfy the penalty for a second violation under Iowa Code Section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (712) 328-4620, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

Don Bauermeister
Asst. City Attorney

cc: City Clerk

IN RE:

Walgreen Company
P.O. Box 901, MS #1435
Deerfield, IL 60015

Walgreen's #5306
301 W. Bennett Avenue
Council Bluffs, IA 51503

HEARING COMPLAINT

The City of Council Bluffs, Iowa, hereby makes the following complaint against the above-named permittee:

1. Iowa Code Section 453A.2(1) provides that a person shall not "sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age."

2. Iowa Code Section 453A.22(2)(b) provides that if a permit holder or employee of a permit holder has violated Iowa Code Section 453A.2(1), the permit holder shall be assessed a civil penalty of a one thousand five hundred dollars (\$1,500.00) fine or a thirty-day cigarette permit suspension for a second violation of Iowa Code Section 453A.2(1) within two years.

3. On or about December 10, 2007, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the criminal citation is attached and incorporated herein.

4. On or about July 23, 2007, the permittee was issued a sanction for a first violation of Iowa Code Section 453A.2.

5. Therefore, in accordance with Iowa law, the City of Council Bluffs requests the Council Bluffs City Council find a violation of the above-referenced sections of Iowa Code Chapter 453A and assess a civil penalty in the amount of a one thousand five hundred dollars (\$1,500.00) fine or a thirty-day cigarette permit suspension against Walgreens #5306, 301 W. Bennett Avenue, Council Bluffs, IA 51501.

HEARING COMPLAINT

PAGE TWO

In Re: Walgreens #5306
301 W. Bennett Avenue
Council Bluffs, IA 51503

A handwritten signature in black ink that reads "Don Bauermeister". The signature is written in a cursive style with a horizontal line underneath it.

Don Bauermeister, Asst. City Attorney
209 Pearl Street
Council Bluffs, IA 51503
(712) 328-4620

COMPLAINT

IOWA UNIFORM CITATION AND COMPLAINT

Council Bluffs Police Dept.

07051656

CB 131853

☒ State of Iowa☐ County of: Pottawattamie No.: 78☐ City of: Council BluffsIn the Court at 227 South 6th Street Council Bluffs, IA 51501VS: Petersen, Shelby Scott
Name Defendant Last First MiddleAddress 19734 Perry Rd.City Co. Bluffs, State IA Zip 51503DL# 990BR5791 (Lic: 482-19-1568) State IADL Class None DL End. 7S DL/State ID Viewed? Yes ☒ No ☐DOB 05/13/91 Race White Ethn. N Sex M Ht. 5'8" Wt. 135The undersigned states that on or about 12/10/07 at 6:21 AM
defendant did unlawfully: N/AOperate Motor Vehicle/Boat (describe) N/ACDL Req? Yes ☐ No ☐ Pass. End. Req? Yes ☐ No ☐ HazMat End. Req? Yes ☐ No ☐

Reg# _____ State _____ Year _____ US DOT# _____

Upon a public highway at 301 W. Bennett Ave.

Located in the county and state aforesaid and did then and there commit the following offense:

☐ Traffic ☐ Navigation ☐ Snowmobile/ATV ☐ Fish-Game ☐ Parks ☒ Tobacco

Sched. Violation/Fine \$ 100.00 ☐ Road Work Zone
 Criminal Surcharge \$ 32.00 ☐ Non-scheduled Violation
 Co. Enf. Surcharge \$ _____ ☐ Court Appearance Required (\$85.10)
 Court Costs \$ 50.00 Reason:
 Total Fine/Costs \$ 182.00 ☐ Serious P.I. ☐ Fatal Accident
☐ Civil Damage Assessment ☐ Other

Violation Employee Provided Tobacco To A Minor.Speed _____ in _____ Zone Sec. 45 20 _____ IA CodeDATA CODE 524 Fed/Adm. Code _____ Local Ord. _____Dated 12/10/07 Officer's Signature [Signature] I.D. No. 655

Court Date: If you must appear in court or if you choose to appear to answer to a charge which does not require an appearance, report to the above named court on

Mo. Day Yr. at 9:00 ☒ AM ☐ PM

NOTICE: Providing false information is a violation of Section 719.3 of the Code of Iowa and is punishable as an aggravated misdemeanor.

You hereby are given notice that within a reasonable time but no later than the date scheduled for your initial appearance a citation/complaint sworn under oath will be filed with the district court clerk of the county in which the citation was issued.

My signature below is not a plea of guilty, but acknowledges all of the following:

- I hereby swear and affirm that the information provided by me on this citation is true under penalty of providing false information.
- I promise to appear in said court at said time and place, or I will comply with the provision on the top of the reverse side of the citation.

The following applies to simple misdemeanors only:

- I hereby give my unsecured appearance bond in the amount of \$248.00 dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation, the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty and surcharge plus court costs.

* [Signature]
Signature of Defendant10th January 08
Shirley E. Neff

IN RE:

Walgreen Company
P.O. Box 901, MS #1435
Deerfield, IL 60015

Walgreens #5306
301 W. Bennett Avenue
Council Bluffs, IA 51503

ACKNOWLEDGEMENT/SETTLEMENT AGREEMENT

I/We hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I/We hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I/We hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I/We understand that this penalty will count as an official "Second Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I/We understand that the penalty for a second violation is a \$1,500.00 fine or a suspension of my/our cigarette permit for thirty (30) days beginning on the date that will be specified in the official city order that I will receive. The above-captioned permit holder hereby waives all jurisdictional claims.

DATED this _____ day of _____, 20____.

In accordance with Iowa Code Section 453A.22(2)(b), the above-captioned permittee chooses the following penalty:

_____ \$1,500.00 fine

_____ 30-day suspension

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this Acknowledgement/Settlement Agreement and waive your appearance at a hearing, this document, properly signed and dated, as well as a check in the amount of \$1,500.00 (if choice of penalty is fine) should be returned to:

City Attorney's Office
209 Pearl Street
Council Bluffs, IA 51503